

## REMARKS

The designations of status of the claims have been corrected to incorporate acceptable terminology.

Rejected claims 1-7, 11, and 25-27 have been cancelled without estoppel or disclaimer of the subject matter thereof, and new independent claim 40 incorporating selected subject matter of the rejected claims is presented herewith. In addition, dependent claim 24 has been amended to depend from new claim 40. These claims are now submitted to distinctively define the invention over Chin et al. '477 and Kieturakis '183 and Vaska et al. '605 when considered either alone or in combination. None of these references, nor the combination of these references, disclose or reasonably suggest or offer any instruction or incentive for combining the disclosures in a manner that resembles the subject matter as now claimed by Applicant. It is therefore respectfully submitted that claims 40 and 24 are now patentably distinguishable over the cited art.

Claims 34-37 have been rejected under 35 USC § 103(a) as being unpatentable over Chin et al. '477 in view of Kieturakis '183 further in view of Hildwein et al. '156. This rejection is respectfully traversed.

These claims variously recite “advancing the [rigid] endoscopic cannula through tissue under endoscopic visualization to form a passage of dissected tissue between the incision and the pericardium”, and “laterally expanding the sheath within the passage responsive to passing the endoscopic cannula through the

expandable sheath . . .”, or “expanding the sheath responsive to withdrawing the endoscopic cannula from the sheath”, or “dilating the working cavity to larger lateral dimension than the endoscopic cannula responsive to insertion into the expandable sheath of surgical tools having dimensions greater than the endoscopic cannula”, or “inserting into the proximate end of the expandable sheath a surgical tool for performing a cardiac procedure in which the surgical tool has a maximal lateral dimension greater than a maximal lateral dimension of the expandable sheath . . .”.

These aspects of the claimed invention promote mechanical expansion of the outer expandable sheath in response to movement therethrough of a surgical tool positioned therein.

These aspects of the claimed invention are not disclosed or even suggested by the cited references considered either alone or in the combination proposed by the Examiner. It should be noted that Chin et al. ‘477 merely forms a channel or tunnel T with a probe 10 to facilitate insertion of an access tool that punches through pericardial tissue. There is no lateral expansion of an external sheath disclosed or suggested in this reference.

And, Kieturakis ‘183 at best discloses an exterior balloon that is inflated about a guide which receives an endoscope. However, there is no disclosure here of inserting a rigid endoscopic cannula toward the pericardium, or of expanding an

outer sheath in response to movement of the endoscopic cannula through the expandable sheath in any manner resembling Applicant's claimed invention.

And, Hildwein et al. '156 is understood to disclose merely a flexible trocar tube at an intercostal location for providing a surgical port into the thorax. There is no suggestion or instruction or even any motivation or incentive found in the cited references for combining the disclosures of these references as the Examiner proposes. And, even so combining the cited references nevertheless fails to establish even a *prima facie* basis including the distinctively recited steps from which a proper determination of obviousness of claims 34-37 can be made. It is therefore respectfully submitted that claims 34-37 and new claim 40 and dependent claim 24 are now patentably distinguishable over the cited art.

Reconsideration and allowance of claims 24, 34, 34-37 and 40 are solicited.

The Examiner is requested to contact the undersigned attorney for the Applicant regarding any remaining issues that may expedite favorable disposition of this application.

Respectfully submitted,  
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Dated: 8/17/05

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